First Impressions Matter

# Confessions of a Former Law Clerk

**By Susan M. Audey**

My years as a law clerk for a well-respected appellate judge taught me many things—the most important was that first impressions matter. And that first impression came—for better or worse—in the appellate briefing. Oral argument—and face-to-face contact—would be months away. My first impression came from the writing that I was either glad to read or forced to endure. The harder I had to work to understand the writing and the writer's argument, the less likely I was to think favorably of the lawyer or the lawyer's argument.

Not that good writing always won the day—it did not. But a well-written brief was intellectually stimulating and caused me to think and ponder arguments that I may have otherwise given short shrift. A poorly written brief had the opposite effect.

Acknowledging the "power of the first impression," I came away from my clerkship vowing never to commit those brief-writing sins that inevitably left me with a negative impression of writers. Here are my top five.

**Avoid using *appellant* or *appellee* to designate a party.** Judges and clerks read *several* briefs in any given week. And *all* the cases involve appellants and appellees. If you want a judge or clerk to remember who your client is without having to go back to the first page of the brief to discover who won or lost in the lower court, then name your client. And you don't fool the court if you name your client but refer to the "other guy" by party designation. Whenever possible, use proper names for *all* parties—it sets the stage for the rest of your argument.

**Avoid using *supra* as part of a case citation.** Lawyers regularly use *supra* to refer to a case cited earlier. But the flow of persuasive argument is broken when a reader, who may have been on board with your argument up to that point, wants to check out that case that you cited only to find that you have cited "*supra*." At this point, the reader has to stop and go backwards in your brief to find the case citation, if he or she does so at all. If it is important to reference, then give that case a short cite. But, as with all citations, makes sure it is cited accurately. There is nothing more irritating to a reader than looking up a case citation to find that the citation is for a *different* case.

**Avoid overusing block quotations.** Lawyers are fond of block quotes. But unfortunately, block quotes are easy to skip over. More importantly, unexplained block quotes offer nothing to a reader in terms of analysis. The best practice is to pull out the most important part of the block quote and quote that portion while weaving it into your analysis. When you do use a block quote, make sure that you provide an explanatory sentence or two either before or after the block quote. The explanation demonstrates the reason behind your use of the quotation and makes it less likely that the judge or clerk will skip over it.

**Avoid use of *clearly.*** If it was clear, your client would not be in an appellate court. Enough said.

**Avoid stream-of-consciousness writing.** This is perhaps the biggest flaw that I noticed while a clerk, and still continue to see in practice. It is the single greatest impediment to clear and concise writing. A brief needs the organization and structure that only comes from thinking, planning, and—here's the word many dread—outlining. When a writer skips these prewriting steps, what results is a disorganized, rambling array of thoughts that, at best, will only be loosely connected to any identifiable argument.

This stream-of-consciousness writing reflects poorly on the writer and upsets a reader. If you want to intellectually stimulate a reader, you need to organize your thoughts, and you can do that best by drafting an outline.

An outline provides a visual snapshot of the logical thought and analysis behind your argument. The goal is to have an outline that identifies the "signposts" in your argument. These "signposts" can become the brief's subheadings, which, if read alone, provide a reader with the gist of your argument and the issue to be resolved.

I will not deny that there are some brilliant lawyers who are highly gifted writers that write—and write well—without the benefit of outlining. I work with some. But even the most brilliant lawyers still think and plan before they start writing. Those lawyers who do not, do little to advance their clients' causes. The actual writing stage is much easier if a lawyer puts time into the planning stage.

Your goals as a brief writer are to persuade and influence. You can achieve these goals by impressing a judge

**Writers' Corner**, continued on page 75

■ Susan M. Audey is counsel with the Cleveland, Ohio, firm of Tucker Ellis & West LLP in its appellate and legal issues practice group. In addition, she teaches brief writing as an adjunct instructor at Cleveland-Marshall College of Law. Before joining Tucker Ellis, she served as a law clerk for the Hon. Timothy E. McMonagle, Ohio Court of Appeals, Eighth Appellate District. Ms. Audey is a member of DRI's Appellate Advocacy, Drug and Medical Device, and Product Liability Committees.

**Writers' Corner**, from page 70
and the judge's clerks with the quality of your writing. The *Practitioners' Guide to the United States Court of Appeals for the Tenth Circuit* emphasizes the importance of this goal:

> The neater the briefs appear, the better written, the more succinct, the more to the point they are, the better the impression the briefs make on the judges.

*Id.* at 49, 6th Rev. (Dec. 2006).

You only have one chance to make a first good impression. Make a good one with your next brief. **FD**